

MINUTES OF THE REGULAR CITY COUNCIL MEETING  
TUESDAY- -APRIL 20, 2010- -7:00 P.M.

Mayor Johnson convened the meeting at 7:13 p.m. Councilmember Matarrese led the Pledge of Allegiance.

ROLL CALL - Present: Councilmembers deHaan, Gilmore, Matarrese, Tam and Mayor Johnson – 5.

Absent: None.

AGENDA CHANGES

None

PROCLAMATIONS, SPECIAL ORDERS OF THE DAY & ANNOUNCEMENTS

(10-160) Proclamation Declaring April 2010 as DMV/Donate Life California Month.

Mayor Johnson read and presented the proclamation to Kathy Clark, Volunteer Coordinator for California Transplant Donor Network.

Ms. Clark thanked Council for recognizing Donate Life Month; encouraged everyone to sign up to become an organ and tissue donor by going to [www.donatelifecalifornia.org](http://www.donatelifecalifornia.org).

(10-161) Proclamation Declaring May 2010 as Asian Pacific Heritage Month.

Mayor Johnson read and presented the proclamation to Benny Chin and Martin Fong.

(10-162) Presentation by the Sunshine Task Force on the List of Priorities and Number of Meetings.

Gretchen Lipow, Chair Sunshine Task Force, and John Knox White, Vice Chair Sunshine Task Force, submitted a handout; gave a brief presentation.

Mayor Johnson inquired whether Council's five items are included, to which Mr. Knox White responded in the affirmative.

Mayor Johnson inquired whether the Sunshine Task Force is looking at other ordinances as models; stated the list is very long.

Mr. Knox White responded San Jose's ordinance has been reviewed; stated the list is not in priority order.

Mayor Johnson stated that she hopes to have an ordinance in place as quickly as possible; she does not understand why an ordinance cannot be done before September; adjustments and modifications can always be made after the ordinance is in place.

Councilmember Gilmore inquired what would be the timeframe for the Sunshine Task Force to review ordinances from other cities and come up with an ordinance that would fit Alameda.

Ms. Lipow responded September; stated the Sunshine Task Force is thinking of having two meetings per month; a weekend workshop might be needed.

Councilmember Gilmore stated September seems like a reasonable goal; reinventing the wheel is not necessary; the ordinance needs to be appropriate for Alameda; record keeping should not be so involved.

Mayor Johnson stated most items on the list could probably be in other ordinances; inquired whether lobbying registration would be a separate track.

Mr. Knox White responded the Sunshine Task Force would address issues as other ordinances are discussed.

Mayor Johnson stated the lobbying registration could be handled by Council separately.

Vice Mayor deHaan inquired whether the lobbying portion is standard boilerplate in other ordinances.

Mr. Know White responded that he does not recall lobbying registration in the ordinance he reviewed.

Vice Mayor deHaan stated campaign finance reform could be separate; inquired whether items on the list are in existing ordinances.

Mr. Know White responded the Sunshine Task Force has not reviewed whether each item is in existing ordinances; stated the idea is to incorporate items that make sense; recommendations would be made for items that do not make sense.

Councilmember Gilmore inquired why lobbying registration should be broken out; stated the public has a different idea of what transparency should be; the point of a Sunshine ordinance is to find out what people think the problems are; carving out pieces seems to be circumventing the process.

Vice Mayor deHaan stated that he concurs with Councilmember Gilmore; the ordinance will include a lot of subject matter and needs to be supported by procedures; ordinances are difficult to put together, let alone in three meetings.

Ms. Lipow stated the Sunshine Task Force could research the two issues.

Mr. Knox White stated the Sunshine Task Force would probably have more than the three or four originally approved meetings.

Vice Mayor deHaan inquired whether staff has reviewed the list.

The Deputy City Manager – Administrative Services responded staff just received the list; stated a number of items were on the original staff report; the list was reviewed exhaustively at the first meeting.

Vice Mayor deHaan inquired what is staff's view of the other ordinances.

The Deputy City Manager – Administrative Services responded that she has not reviewed the other ordinances; stated San Jose's ordinance has a lot of meat in it; Berkeley's ordinance has been a work in progress and will be going on the ballot in November.

Vice Mayor deHaan stated larger cities have put networks together; the ordinance has to be tailored to Alameda as noted by Councilmember Gilmore.

The City Attorney stated the City Attorney's office is responsible for drafting and approving as to form legislation; a number of model ordinances have been compiled; that she understands the Sunshine Task Force was tasked to come up with additional comments that the public might want to see folded into an ordinance; that she would be happy to review the list to see which of the model ordinances could be tailored; Council's five priorities could be broken out and ordinances could be tasked on a quick time basis; a lobbying ordinance is generally separate.

Mayor Johnson stated the Sunshine Task Force can work on the Sunshine Ordinance.

The City Attorney stated legislation is drafted through the City Attorney's office; the City Attorney's office needs to have input even if the ordinance is drafted elsewhere; the Sunshine Task Force can continue to identify issues that are of key importance to the public; the issues could be brought to Council and Council could direct the City Attorney's office to draft the ordinance as a policy decision.

Councilmember Tam stated that she concurs with the City Attorney; the list is not just about subject matter but includes procedures, records not being available, and what constitutes a Closed Session meeting; items discussed by the Sunshine Task Force might not be captured in an ordinance; potentially, there would be six meetings between now and September; prioritizing the Council's five items, including some of the Sunshine Task Force issues, having the items go through a public vetting process, providing a draft that can be vetted with the City Attorney for form, and coming back for Council approval would help facilitate what the Mayor is talking about in picking up certain priority issues such as the lobbyist registry; the Council Referral [paragraph no. 10-175] is patterned after Los Angeles; that she is trying to wrestle with the urgency and relevance to Alameda; Los Angeles has former Senators and Assembly Members acting as lobbyists; people tend to lobby for themselves in Alameda.

Mr. Knox White inquired whether the Sunshine Task Force would draft and provide an ordinance to the City Attorney for vetting.

Councilmember Tam responded that a draft ordinance needs to be approved as to form by the City Attorney; the City Attorney's office provides a staff person at Sunshine Task Force meetings; hopefully, staff will help to develop the initial draft, which will go through the process of consistency with existing ordinances.

Mayor Johnson stated the City Attorney suggested that the Sunshine Task Force define the issues and then the City Attorney's office would draft the ordinance.

The City Attorney stated the Sunshine Task Force would identify issues to Council; Council will make the policy decision and give direction to the City Attorney; the ordinance would come back in open session for community input and adoption.

Councilmember Matarrese inquired whether Council direction would be given to the Sunshine Task Force; stated that he does not want individual Council comments to be confused with Council direction; that he is hearing consensus that the comprehensive list will take more than the originally prescribed meetings to accomplish.

Mayor Johnson stated that she agrees with Councilmember Tam regarding things on the list not belonging in the ordinance.

Councilmember Matarrese stated the first point is that more than the prescribed number of meetings will be needed; the second point is that some things can move along on a separate track.

Mayor Johnson stated the SunCal process - document financing on the list has nothing to do with the Sunshine Task Force.

Ms. Lipow stated the Sunshine Task Force listed all public comments.

Councilmember Gilmore stated Council understands that the Sunshine Task Force will need more meetings than originally anticipated; suggested that the Sunshine Task Force go back and discuss Council priorities and add another three to five more from the list for submittal to the City Attorney's office; stated a lot of items on the list do not necessarily fall under the purview of an ordinance but are important; the list should be prioritized for Council to discuss regarding policies and procedures.

Mayor Johnson stated that she prefers to deal with stand-alone issues that are not directly related to the Sunshine Ordinance; issues should be brought to Council directly from the City Attorney's office.

The City Attorney stated the City Attorney's office is very interested in the list and any additional issues; ultimately, she takes direction from Council; the list should come back to Council first and then determine what to do with the additional items as a policy

decision; Council has made the top five priorities clear; that she can get started on the ordinances.

Mayor Johnson stated the City Attorney's suggestion makes sense.

Vice Mayor deHaan stated the thrust of what Council is trying to do might get lost, which is to have one overall Sunshine Ordinance; each separate ordinance can be folded in as the overall ordinance is finalized.

The City Attorney stated the Municipal Code could end up having one Sunshine Chapter with different sections, which would be more reader friendly.

Vice Mayor deHaan stated different topics should fold into an overall ordinance; that he is hearing that the City could build [the ordinance] from the five [Council priorities] and another five [priorities] from the Sunshine Task Force.

Mayor Johnson stated that she does not know where five items from the Sunshine Task Force came from.

Councilmember Gilmore stated the idea came from her; Council's five priorities are clear; the whole point of having a public Sunshine Task Force is to get input from the public that has a different point of view of what the issues are; having the community put forth items of concern seems fair; the second part is that things may not belong in an ordinance because other ordinances already deal with the issue, but implementation procedures might need streamlining; Council does not need to deal with procedures for getting information, but the public does; the Sunshine Task Force can provide items that the public has issues with when requesting information; Council can take a look at the procedures and have staff come up with ways to streamline or clarify the process.

Mayor Johnson stated that she concurs with Councilmember Gilmore.

Councilmember Tam stated that she appreciates that the City Attorney takes direction from Council; she would like to benefit from the expertise of the Sunshine Task Force; she would like the Sunshine Task Force to review the ordinance and provide input after the City Attorney drafts the ordinance.

Mayor Johnson stated that she is fine with the draft ordinance going back to the Sunshine Task Force for review; Council priorities can be done on a separate track.

The City Attorney stated that she can bring back Council's five priorities; the Sunshine Task Force does not need to review the items; the community may have additional issues which the Sunshine Task Force could review.

Councilmember Tam stated Council's five priorities were not priorities but were captured in a staff report; that she would like to have validation that the five items are Council priorities.

The City Attorney stated that she recalls the five items as being priority items; the matter was discussed at great length a couple meetings back.

Mayor Johnson stated changes could be made to the list.

Councilmember Gilmore stated that she understands that the five items were not Council priorities in terms of needing to get done first and foremost as much as making sure the Sunshine Task Force would discuss the items.

Mayor Johnson stated the Sunshine Task Force wants to take time and not be rushed; the five items were discussed extensively and were to be prioritized; the five items were to come back in addition to other items; that she is in full agreement with the process proposed by Councilmember Gilmore, but the five Council priorities should be dealt with on a separate track; the public would have opportunity to provide input.

Councilmember Gilmore inquired why the five items were sent to the Sunshine Task Force instead of being submitted to the City Attorney, to which Mayor Johnson responded the five items should have been sent to the City Attorney.

Councilmember Matarrese stated the five items are not solely Council items; one Council priority is providing direction on the Public Records Act regarding costs and turnaround time for a request and is one that he hears often from the public; there is no reason why the draft from the City Attorney's office cannot go to the Sunshine Task Force as well as Council; Council can give direction on the campaign reform and lobbying issues now.

Mayor Johnson stated the Sunshine Task Force can provide comments on the two issues.

Vice Mayor deHaan stated Council wants a Sunshine Ordinance; inquired whether Council wants to go forward with an overall ordinance.

Mayor Johnson responded in the negative; stated there are separate topics that are appropriate for separate ordinances.

The City Attorney stated the City Attorney's office would bring back ordinances on the five priorities for Council review; priorities can be remanded to the Sunshine Task Force for additional comment.

Vice Mayor deHaan stated the big project is the overall Sunshine Ordinance; inquired whether the Sunshine Task Force would formulate the Sunshine Ordinance or provide a thought pattern on where to go with the ordinance.

Mayor Johnson responded the Sunshine Task Force would come up with a list of items to bring to Council; stated the Sunshine Task Force would not want to draft the

ordinance.

Councilmember Tam stated the Sunshine Task Force is suggesting developing a Sunshine Ordinance by September but is not saying what the ordinance should contain; Council is suggesting that separate guidelines can be a subset to the Sunshine Ordinance or a chapter within the ordinance; inquired whether it is Mayor Johnson's understanding that [guidelines] are not necessarily part of the ordinance being development by the Sunshine Task Force.

Mayor Johnson responded in the affirmative; stated everything could be in the same chapter of the Municipal Code.

Councilmember Tam stated the five priorities are: 1) provide direction under the Public Records Act requests regarding costs and turnaround time; 2) extend the noticing requirement for public meetings beyond 72-hours; 3) develop guidelines regarding the minimum radius that must be used when notifying neighbors about land use matters; 4) campaign finance reports; and 5) lobbyist registry; according to the original staff report, the campaign finance issue was more about ensuring that the campaign finance documents that every elected official and ballot measure committee file with the City are easy to access.

Vice Mayor deHaan stated that he suggested contribution limits; other cities take the Sunshine Ordinance as a separate ordinance.

The City Attorney stated there is not a generic Sunshine Ordinance; the generic term is used for a variety of regulations that encourage and enforce open government and citizen accessibility; suggested that she start with the five Council priorities; the idea is for the Sunshine Task Force to identify issues at the three meetings and bring the issues back to Council in a final report; Council can review the issues and make policy direction as a result of the input and give direction to the City Attorney to craft one or more ordinances that come under the general rubric of Sunshine or open government principles; she can bring back draft ordinances on lobbying and campaign reform.

Mayor Johnson stated that she is fine with the City Attorney's suggestion; she is fine with coming back with a good model of another city's ordinance with changes.

The City Attorney stated that she would be happy to have any kind of additional ordinance samples that speak to what Alameda needs; ultimately, it will be a Council policy decision.

Mr. Knox White stated the City Attorney's suggestion is exactly what the Sunshine Task Force is recommending.

Vice Mayor deHaan stated the direction is a little different than coming to an overall Sunshine Ordinance; that he is hearing that the Sunshine Task Force would look at various other ordinances to see what is a good array and make a suggestion, then

Council will figure how to put an ordinance together.

Mayor Johnson stated the Sunshine Task Force could find the San Jose ordinance perfect with modifications and bring the ordinance to Council; Council could consider the ordinance and give direction to the City Attorney's office.

Vice Mayor deHaan stated the process would take more than three meetings.

Mayor Johnson stated that she does not have a problem with more than three meetings.

Ms. Lipow stated the Sunshine Task Force has been very open with taking suggestions in light of transparency and involving the public; there was no time to vet the issues listed.

Mayor Johnson stated the City Attorney's office can include items not included in a sample ordinance.

Ms. Lipow stated tonight's discussion boils down what is important to Council; the Sunshine Task Force would like Council's blessing to exist longer than three meetings.

Councilmember Matarrese stated the Sunshine Task Force should take the time that is needed, work timely, and take from other ordinances; the least amount of work and fastest way to put together an ordinance is to take something that exists, ensure issues gathered from the public are met, and bring the semi-finished ordinance to Council to provide to the City Attorney; the Sunshine Task Force needs to modify an existing ordinance to fit Alameda.

The City Attorney stated that she would hate to see hard working volunteers duplicating staff efforts; getting a copy of a particular provision within an ordinance that speaks to community needs and comments received would be great rather than having the Sunshine Task Force draft an ordinance, which the City Attorney's office does.

Mayor Johnson stated the Sunshine Task Force should review other ordinances and note changes that need to be made for Alameda.

Mr. Knox White stated direction is very clear.

Mayor Johnson inquired whether Council needs to give direction on separating out and bringing back the five Council priorities, to which the City Attorney responded direction can be given through the Interim City Manager.

Mayor Johnson stated that her Council Referral to Direct Staff to Develop Lobby Disclosure Ordinance and Registry [paragraph no. 10-] does not need to be heard.

Vice Mayor deHaan stated community input has been received; Berkeley has been on the mission [developing a sunshine ordinance] for two and a half years or more and the

matter will go on a ballot, which is not Alameda's intent.

Ms. Lipow stated the Sunshine Task Force would review existing ordinances.

Councilmember Tam stated that she agrees with Councilmember Gilmore; maximizing the opportunity for the public to comment is important rather than having staff pick and chose from an ordinance, especially for something as complicated as campaign finance reform.

Ms. Lipow stated the public is invited to the meetings; efforts will be made to get the public's suggestions.

Mr. Knox White stated that he understands that the two items [campaign reform and lobbying] are to be pulled out and placed on a separate track.

Councilmember Matarrese stated the Sunshine Task Force would have an opportunity to comment on the matter.

Mayor Johnson stated ordinance can be revised and are not set in stone.

### CONSENT CALENDAR

Vice Mayor deHaan moved approval of the Consent Calendar.

Councilmember Matarrese seconded the motion, which carried by unanimous voice vote – 5. [Items so enacted or adopted are indicated by an asterisk preceding the paragraph number.]

(\*10-163) Minutes of the Special and Regular City Council Meetings held on April 6, 2010. Approved.

(\*10-164) Ratified bills in the amount of \$1,885,416.92.

(\*10-165) Recommendation to Receive an Update on the City's Green Initiatives. Accepted.

(\*10-166) Recommendation to Authorize the Interim City Manager to Execute All Necessary Agreements with the Water Emergency Transportation Authority and Blue & Gold Fleet for the Operation of the MV Taurus. Accepted.

(\*10-167) Recommendation to Adopt Plans and Specifications and Authorize Call for Bids for Culvert Reconstruction at Various Locations, No. P.W. 02-10-04. Accepted.

(\*10-168) Resolution No. 14434, "Preliminarily Approving the Annual Report Declaring the City's Intention to Order the Levy and Collection of Assessments and Providing for Notice of Public Hearing on June 15, 2010 – Island City Landscaping and Lighting

District 84-2.” Adopted.

(\*10-169) Resolution No. 14435, “Preliminarily Approving the Annual Report Declaring the City’s Intention to Order the Levy and Collection of Assessments and Providing for Notice of Public Hearing on June 15, 2010 – Maintenance Assessment District 01-01 (Marina Cove).” Adopted.

(\*10-170) Resolution No. 14436, “Approving the Application for Grant Funds for the Urban Greening Planning Grant Program Under the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006 (Proposition 84).” Adopted.

#### CITY MANAGER COMMUNICATIONS

(10-171) Alameda and Contra Costa County City Managers' Proposal for Regional Pension Reform.

The Interim City Manager gave a brief presentation.

Mayor Johnson inquired when Council would receive a PERS update, to which the Interim City Manager responded Mr. Bartel will be providing a PERS actuarial update at the next Council meeting.

Mayor Johnson inquired how is PERS looking right now.

The Interim City Manager responded the actuarial estimates for this year are based on PERS earnings through June 30, 2008, not June 30, 2009; estimates were based on an assumption of a 7.5% rate of return; PERS rates have increased by 50% for many cities; PERS has indicated that the assumption has changed to 6%.

Vice Mayor deHaan stated shortfalls addressed today, particularly pension fund shortfalls, are a result of decisions made 25 years ago; the concern is the legacy left to the City 25 or 30 years from now; the federal government made some decisions 25 to 30 years ago to split its pension fund; decisions were not made under distress; the postal service made the same decision in the early 1990’s; that he is not sure whether cities are coming close to addressing the issue; cities are staying with PERS; shortfalls are paid by cities.

The Interim City Manager stated the issue needs to be addressed at a statewide policy level to make PERS sustainable; cities are competing with each other; many City Manager groups have come out in a strong policy venue to indicate the necessity to tier pension systems with new hires.

(10-172) Update on Ordinance Prohibiting RV, Boat, and Trailer Parking

The Interim City Manager gave a brief presentation; suggested the driveway 20 foot no

parking rule be revised.

Councilmember Matarrese stated the amendment is good because storage of non-self propelled vehicles, trailers, etc. would not be on the street; that he does not see anything in the ordinance that allows people time to load up a recreational vehicle.

The Police Lieutenant stated Councilmember Matarrese is referring to a temporary, one-day permit; the goal is to gain compliance; individuals can call dispatch to receive the temporary, one-day permit.

Councilmember Matarrese inquired whether said information is in the ordinance, to which the Police Lieutenant responded in the negative.

Councilmember Matarrese stated information needs to be included in the ordinance.

Councilmember Gilmore inquired how people would know to call dispatch for a one-day permit if information is not in the ordinance; stated the issue is about noticing.

The Interim City Manager responded the ordinance would be amended.

Mayor Johnson inquired whether information could be placed on the website so that the public is informed, to which the Interim City Manager responded in the affirmative.

The Police Lieutenant stated the Police Department has discretionary power; Police Officers are quite diplomatic.

Mayor Johnson stated people do not know that there is a process; everyone should know that dispatch can be called for a temporary one-day permit.

The Police Lieutenant stated advising the public would be beneficial.

Mayor Johnson stated the proposed ordinance has made a huge change.

The Police Lieutenant stated that parking enforcement has indicated the proposed ordinance has made a dramatic difference.

Mayor Johnson stated that she noticed some commercial trailers not attached to vehicles.

The Police Lieutenant stated Code 8-7.11 addresses the matter; said vehicles are eligible to be cited or towed.

The Interim City Manager stated eight calls were received and were split 50-50 pros and cons for the ordinance; staff will be very diligent in crafting the text amendment to ensure that a boat, trailer, or recreational vehicle is not moved to the front lawn.

Mayor Johnson stated vehicle size needs to be addressed for driveway parking.

In response to Councilmember Tam's inquiry regarding notification, the Police Lieutenant responded a press blitz went out on February 11th and April 1st; stated information was posted on the Police Department's website.

Mayor Johnson inquired whether notices were placed on vehicles also, to which the Police Lieutenant responded in the affirmative.

Speaker: Adam Gillitt, Alameda.

Mayor Johnson inquired what is the current twenty-foot restriction, to which the City Attorney responded vehicles need to be parked twenty feet from the sidewalk to provide clearance.

Mayor Johnson stated a lot of driveways are not twenty feet long; the restriction needs to be changed; there needs to be a limitation on size; vehicles, other than automobiles, need to be back out of the front portion of the lot.

The Interim City Manager stated people are going to park on the street if they cannot park within the first twenty feet of the driveway; changing the twenty-foot restriction would help relieve street parking.

Mayor Johnson inquired whether the Police Department can give the citation, to which the Interim City Manager responded the issue becomes a Code Enforcement issue once the vehicle is on the other side of the sidewalk.

Vice Mayor deHaan noted people are parking on apron areas.

The Interim City Manager stated the issue is all-inclusive.

### REGULAR AGENDA ITEMS

(10-173) Public Hearing to Consider Introduction of an Ordinance Amending Section 30-6, 30-36, and 30-37, of the Alameda Municipal Code to Improve the Design Review and Sign Ordinance Provisions for the City of Alameda. Introduced.

The Planning Services Manager gave a Power Point presentation.

Mayor Johnson inquired whether the existing language in the Guide to Residential Design Amendments would be changed.

The Planning Services Manager responded Section 30-37.2, "Improvements Subject to Design Review and Exceptions", subsection b.3 states that an exemption would be granted for a replacement of a structure or architectural element which is a visual match to the existing structure or element in terms of location, size, and shape.

Mayor Johnson stated people could replace aluminum windows with the same; questioned whether an exception should be granted.

The Planning Services Manager stated people should not be required to go through Design Review if the outward appearance does not change; language could be crafted that would specifically deal with aluminum sliders.

Councilmember Gilmore stated Design Review should be required for aluminum sliders.

Mayor Johnson stated the ordinance should require Design Review for anything inconsistent with the original [structure or architectural element].

The Planning Services Manager stated language could be crafted regarding existing versus original.

Vice Mayor deHaan stated vinyl has some attributes for double hung windows; inquired how the issue would be handled.

The Planning Services Manager stated that he does not think the issue is about materials; what a window is made of is not important if the window looks like the original design and fits with the architectural character of the home.

Mayor Johnson stated Harbor Bay home owners have not applied for permits to put in new windows or install internal muttons; people have put in less attractive windows with no panes in order to have dual pane windows; inquired whether internal muttons are still a concern.

The Planning Services Manager responded in the negative; stated that he wants to bring back all guidelines for consistency; the language in the Guide to Residential Design Review that states internal muttons are never appropriate needs to be struck.

Councilmember Gilmore inquired what it [language] would be changed to.

The Planning Services Manager responded a blanket statement cannot be applied to the Guide to Residential Design Review.

Mayor Johnson stated Council made it very clear that guideless were to be guidelines, not rules.

The Planning Services Manager stated adjustments would be made to the guidelines; the Design Review Program really depends on consistent training and implementation.

Mayor Johnson stated a more defined, transparent process is needed; that she is not confident that a person coming in three different times would not get three different answers.

The Planning Services Manager stated language would be clarified in the ordinance, guidelines, and window replacement handout.

Councilmember Gilmore stated windows should have a special section; the age of the house is important; a window guide should include pictures to show what is appropriate and what is not.

The Planning Services Manager inquired whether the window guideline should be brought back at the final passage.

Councilmember Gilmore responded if possible; stated the Planning Board spends an incredible amount of time with applicants and neighbors discussing windows.

Mayor Johnson stated that she recalls a man wanting to put a new faucet in the kitchen and a building inspector told the man that aluminum sliders needed to be removed; the aluminum sliders were there before the man bought the house; the Chief Building Official told her that aluminum sliders were a health and safety issue; people are going to run into the same problem if a proper process is not in place.

The Interim City Manager stated things are not written very clearly; the message is clear that the ordinance needs to be narrowly constructed.

Mayor Johnson stated having unclear language makes things unpredictable for the public; that she hopes the requirement for electrical upgrades when replacing countertops has been changed.

The Interim City Manager stated staff is running into conflicts between the Building Code and Fire Code; the issue is being reviewed.

Councilmember Matarrese stated everyone agrees that aluminum sliders are bad; requiring outlets every so often to encourage use of electrical appliances may not be the right thing to do in today's world; the ordinance is not set in stone; a good amount of prescription is needed; there is room for discretion; everything goes back to training with the attitude that improvements are being made and not telling people what to do.

Vice Mayor deHaan stated the industry has been able to solve the problems with aluminum sliders.

Councilmember Matarrese stated plastic sliding has been resolved also.

Councilmember Gilmore stated most residents first and only contact with City Hall is when they want to do something to their house; getting the same answer when the same question is asked is important; the City needs to project a business friendly, responsive approach.

The Planning Services Manager stated everyone would benefit from a clearly written ordinance.

Mayor Johnson stated appearance is more important than material; wood should not have to be required for a Victorian if another material looks the same.

The Planning Services Manager continued the presentation.

Mayor Johnson inquired whether an ugly aluminum awning could be replaced with the same.

The Planning Services Manager responded the ordinance would require that a new aluminum awning matches the existing awning and be consistent with the criteria.

The Planning Services Manager continued the presentation.

Councilmember Matarrese inquired whether the criteria would be consistent for the people making the design decision on the Façade Program and the Planning Department, to which the Planning Services Manager responded the same staff handles both.

Mayor Johnson inquired whether the bullet stating: “not internally illuminated” applies to neon signs, to which the Planning Services Manager stated the bullet applies to awnings.

The Planning Services Manager continued the presentation.

Councilmember Gilmore inquired whether the Design Review Submittal Requirements is a check list, to which the Planning Services Manager responded in the affirmative.

Mayor Johnson opened the public portion of the hearing.

Proponents: (In favor of Ordinance): David Baker, Alameda; Betsy Matheson, Alameda; Christopher Buckley, Alameda Architectural Preservation Society; Elizabeth Green, Alameda; Nancy Gordon, Alameda; Kathy Moehring, West Alameda Business Association.

There being no further speakers, Mayor Johnson closed the public portion of the hearing.

Following Mr. Baker’s comments, Mayor Johnson inquired how staff deals with plans that are sketched out.

The Planning Services Manager responded staff wants to redo the Submittal Requirements handout; stated staff needs to be very clear on what the City needs from an applicant so the proposal can be adequately reviewed.

Mayor Johnson stated applicants should be given a picture of what the windows should look like; that she does not expect people to spend money for an architect to design windows.

The Planning Services Manager stated staff hardly ever has a problem with applicants who are willing to spend money for an architect.

Mayor Johnson stated hiring an architect cannot be a requirement.

Councilmember Tam stated sometimes contractors have difficulty with the English language; inquired whether the City has resources to assist with translation, to which the Planning Services Manager responded employees help with translation.

In response to Vice Mayor deHaan's inquiry regarding solar panels, the Planning Services Manager responded State code determines that the City cannot regulate solar panels through the Design Review program.

In response to Vice Mayor deHaan's inquiry regarding roof pitch, the Planning Services Manager responded all zoning requirements need to be met; exceeding the zoning height by matching the pitch of a roof would require a variance and would not have an exemption.

Councilmember Matarrese moved introduction of the ordinance with the amendments discussed.

Councilmember Tam seconded the motion, which carried by unanimous voice vote – 5.

#### ORAL COMMUNICATIONS, NON-AGENDA

(10-174) Andy McKinley, Grand Marina General Manager, submitted a handout; discussed rent increase.

Mayor Johnson stated Council would have a briefing on the issue; inquired whether Mr. McKinley has a deadline on Friday.

Mr. McKinley responded he needs to submit \$108,000 by Friday and also sign an agreement stating that Grand Marina agrees with the interpretation of the lease, which Grand Marina does not.

Mayor Johnson inquired whether the timeline could be adjusted until after the Council briefing, to which the City Attorney responded in the affirmative.

Mayor Johnson suggested that Mr. McKinley contact the City Attorney's office for confirmation.

Councilmember Matarrese stated the best practice has not been employed; the communication does not sound like communication between a major source of revenue and stewardship for the City's tidelands; requested a briefing on the communication to ensure that the communication was fitting.

The City Attorney stated a number of written communications took place well in advance of the 2010 increase.

### COUNCIL REFERRALS

(10-175) Consider Directing Staff to Develop Lobby Disclosure Ordinance and Registry. Not heard.

Refer to the presentation by the Sunshine Task Force [paragraph no. 10-162] for discussion.

(10-176) Consider Directing Staff to Draft a Resolution Supporting Measure E for Council Consideration on May 4.

Councilmember Gilmore gave a brief presentation.

Mayor Johnson stated the resolution would need to come back for adoption.

The Interim City Manager stated the issue could be referred to staff to prepare the resolution.

Vice Mayor deHaan inquired whether Council endorsement has been done in the past, to which Mayor Johnson responded in the affirmative.

The Deputy City Manager – Administrative Services stated Council endorsed a resolution for the last School District parcel tax.

Speaker: David Howard, Alameda.

Councilmember Tam moved approval of directing staff to prepare a resolution in support of Measure E.

Councilmember Tam stated that she had the opportunity to meet with the Superintendent and School Board President as well as advocates for the campaign; clearly, the School District is dealing with a lot of the issues the City is facing; over a two year process, the School District has formulated a Master Plan to address the trade off between the cost of providing first class education and State take away funding; that she has seen the API scores go up across the board.

Councilmember Matarrese seconded the motion, which carried by unanimous voice vote – 5.

## COUNCIL COMMUNICATIONS

(10-177) Councilmember Matarrese gave a brief presentation on the AC Transit Interagency Liaison Committee of April 14<sup>th</sup>; stated updates were provided on recent transit service changes and additional service changes anticipated for September; cuts were to be 15% during the last round; AC Transit cut 8% so there is a need for more cuts; Alameda took an approximate 20% service reduction and should not be required to take more; a Paratransit Shuttle system update was provided; technical issues were discussed regarding traffic impact on drivers pulling into the bus stops; the next meeting is tentatively scheduled for May 12, 2010; noticing of the last meeting had some problems; Public Works is going to work with the City Clerk to ensure the next meeting is appropriately noticed; submitted information to the City Clerk.

Vice Mayor deHaan inquired how much of a reduction the City has had over the last five years.

Councilmember Matarrese responded the City has experienced a 20% over the last year; stated that he would need to check on the total reduction over the last five years.

Vice Mayor deHaan stated the AC Transit situation is getting deplorable.

Councilmember Matarrese stated AC Transit staff is considering putting back the 51 Line because of protest from one neighborhood in Oakland; City staff is committed to ensuring that no cuts are made to the Fruitvale BART Station on the 51A Line.

(10-178) Councilmember Tam stated that she attended the League of California Cities East Bay Division meeting on April 15<sup>th</sup>; the League has been successful in getting a million signatures; 1.15 million signatures are needed to get the initiative on the November ballot in order to protect local government funding and the State property and gas task take aways; Pacific Gas & Electric (PG&E) made a presentation regarding the SmartMeter Program; the Public Utilities Commission mandates installing SmartMeters; Oakland's meters are almost completely installed; Alameda only gets gas from PG&E; SmartMeters would start to be installed this summer; homeowners will be noticed; the SmartMeter is intended to be more efficient and allow a homeowner to shut off gas off site.

## ADJOURNMENT

There being no further business, Mayor Johnson adjourned the meeting at 10:17 p.m.

Respectfully submitted,

Lara Weisiger  
City Clerk

The agenda for this meeting was posted in accordance with the Brown Act.

MINUTES OF THE SPECIAL JOINT CITY COUNCIL,  
ALAMEDA REUSE AND REDEVELOPMENT AUTHORITY (ARRA)  
AND COMMUNITY IMPROVEMENT COMMISSION MEETING  
TUESDAY- -APRIL 20, 2010- -6:00 P.M.

Mayor/Chair Johnson convened the meeting at 6:05 p.m.

Roll Call - Present: Councilmembers/Board Members/ Commissioners deHaan, Gilmore, Matarrese, Tam and Mayor/Chair Johnson – 5.

Absent: None.

The meeting was adjourned to Closed Session to consider:

(10-157 CC/ARRA) Conference with Real Property Negotiator; Property: Alameda Ferry Vessels and Ferry Terminals; Negotiating Parties: City of Alameda, Alameda Reuse and Redevelopment Authority, Water Emergency Transit Authority; Under Negotiations: Terms under which City will transfer the Alameda Ferry Services to WETA.

(10-158 CC/ARRA/10-17 CIC) Conference with Legal Counsel - Anticipated Litigation; Significant Exposure to litigation pursuant to subdivision (b) of Section 54956.9; Number of Cases: One.

Following the Closed Session, the meeting was reconvened and Mayor/Chair Johnson announced that regarding Alameda Ferry Vessels and Ferry Terminals, the Council/Board Members received a briefing on the status of negotiations regarding the transfer of Ferry Services to the Water Emergency Transit Authority and provided direction on negotiating parameters; regarding City Council/ARRA/CIC Anticipated Litigation, the Council/Board Members/Commissioners received a briefing from the City Attorney/Legal Counsel regarding a matter of anticipated litigation; no action was taken.

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Mayor/Chair Johnson called a recess at 7:10 p.m. and reconvened the meeting at 11:55 p.m.

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The meeting was adjourned to Closed Session to consider:

(10-159 CC) Conference with Labor Negotiators; Agency Negotiators: Interim City Manager; Employee Organization: Executive Management.

(ARRA) Conference with Real Property Negotiator (54956.8); Property: Alameda Point (Potential Lease of a 1 Acre Site); Negotiating Parties: ARRA and Bay Ship & Yacht; Under Negotiation: Price and terms.

(10-18 CIC) Conference With Legal Counsel - Anticipated Litigation; Significant Exposure to litigation pursuant to subdivision (b) of Section 54956.9; Number of Cases: One.

Following the Closed Session, Mayor/Chair Johnson announced that regarding Labor, the matter was continued; regarding Alameda Point, Board Members received a briefing from its real property negotiator and provided negotiating direction; regarding CIC Anticipated Litigation, the Commissioners received a briefing from Legal Counsel and staff regarding the matter and provided direction.

### Adjournment

There being no further business, Mayor/Chair Johnson adjourned the meeting at 12:25 a.m.

Respectfully submitted,

Lara Weisiger, City Clerk  
Secretary, CIC

The agenda for this meeting was posted in accordance with the Brown Act.

MINUTES OF THE SPECIAL JOINT CITY COUNCIL,  
ALAMEDA REUSE AND REDEVELOPMENT AUTHORITY (ARRA)  
AND COMMUNITY IMPROVEMENT COMMISSION (CIC) MEETING  
TUESDAY- -APRIL 20, 2010- -7:01 P.M.

Mayor/Chair Johnson convened the meeting at 10:18 p.m.

ROLL CALL - Present: Councilmembers / Board Members / Commissioners  
deHaan, Gilmore, Matarrese, Tam and Mayor/Chair  
Johnson – 5.

Absent: None.

CONSENT CALENDAR

Mayor/Chair Johnson announced that the recommendation to direct staff to prepare amendments to the Grand Marina Village Master Plan [paragraph no. 10-180A CC/10-20A CIC] was removed from the Consent Calendar for discussion.

Councilmember/Board Member/Commissioner Tam moved approval of the remainder of the Consent Calendar.

Councilmember/Board Member/Commissioner Matarrese seconded the motion, which carried by unanimous voice vote – 5. [Items so enacted or adopted are indicated by an asterisk preceding the paragraph number.]

(\*10-179 CC/ARRA/\*10-19 CIC) Minutes of the Special Joint City Council, Alameda Reuse and Redevelopment Authority and Community Improvement Commission Meeting Held on April 6, 2010. Approved.

(\*10-180 CC/10-20 CIC) Recommendation to Approve a Second Amendment to the Grand Marina Village Affordable Housing Agreement Between the City, Community Improvement Commission and Warmington Homes Decreasing the Number of Affordable Housing Units from Ten to Six and Authorizing the Interim City Manager/Interim Executive Director to Execute the Amendment; and

(\*10-180A CC/10-20A CIC) Recommendation to Direct Staff to Prepare Amendments to the Grand Marina Village Master Plan for a Reduction in the Inclusionary Housing Obligation and an Enhancement of City Landscaping and Paving for City Council Consideration on June 1, 2010.

Councilmember/Commissioner Gilmore stated the Grand Marina Village and Alameda Landing projects are subject to the 25% inclusionary requirement; inquired how Alameda Landing would be affected if the reduction is approved for Warmington Homes.

The Economic Development Director responded the language would automatically change the requirements for Alameda Landing based upon any subsequent code modifications the City would make.

Councilmember/Commissioner Gilmore moved approval of the staff recommendation.

Councilmember/Commissioner Matarrese seconded the motion, which carried by unanimous voice vote – 5.

#### CITY MANAGER/EXECUTIVE DIRECTOR COMMUNICATION

##### (10-181 CC/ARRA/10-21 CIC) Semimonthly Update on SunCal

The Deputy City Manager – Development Services provided a handout and gave a brief presentation.

Councilmember/Board Member/Commissioner Matarrese requested expansion on the Pacific Gas & Electric (PG&E) gas system issue.

The Deputy City Manager – Development Services stated currently, ARRA owns the Alameda Point gas system; PG&E operates and maintains the gas system; the operating agreement expired years ago; PG&E is still meeting all [agreement] obligations; ARRA has options to either enter into an operating agreement to pay PG&E a certain amount annually or convey the system to PG&E; preliminary discussion have been held; operating costs could be included in the rates if PG&E owns the system, which would eliminate ARRA operation and maintenance costs.

Vice Mayor/Board Member/Commissioner deHaan inquired whether the Environmental Impact Report (EIR) would scope the [modified Optional Entitlement Application (OEA)] project or the density bonus option, to which the Deputy City Manager – Development Services responded both.

In response to Vice Mayor/Board Member/Commissioner deHaan's inquiry regarding the public scoping session the Deputy City Manager – Development Services stated the Planning Board meeting would have staff and EIR consultant presentations and public comment.

The Planning Services Manager stated the purpose of the scoping session is to provide an opportunity for the public to identify issues to be addressed in the EIR, which has not been written yet.

Vice Mayor/Board Member/Commissioner deHaan stated the public session would be significant; inquired whether there has been discussion regarding similarities between Measure B and the density bonus option.

The Deputy City Manager – Development Services responded in the affirmative; stated the Notice of Preparation will have a footnote describing the difference between Measure B and density bonus option; Measure B and the density bonus option are essentially the same in terms of residential units; the density bonus option includes one additional acre of open space and additional commercial square footage.

Vice Mayor/Board Member/Commissioner deHaan questioned why SunCal had a Measure A non-compliant proposal because the numbers are the same.

The Deputy City Manager – Development Services stated the [modified OEA] project is Measure A compliant.

Vice Mayor/Board Member/Commissioner deHaan inquired whether the density bonus is Measure A compliant.

The Deputy City Manager – Development Services responded a density bonus application has not been submitted; the [density bonus] project is foreseeable and needs to be studied under the California Environmental Quality Act (CEQA) because SunCal submitted a project description letter.

Councilmember/Board Member/Commissioner Tam inquired whether there are any obligations to outreach to Chinatown regarding the scooping session.

The Deputy City Manager – Development Services responded a Notice of Preparation would be sent to Chinatown.

Councilmember/Board Member/Commissioner Tam inquired whether Chinatown would need to attend the public scooping session and the City would not have a special session with Chinatown, to which the Deputy City Manager – Development Services regular meetings are scheduled with Chinatown; a special meeting can be discussed.

Councilmember/Board Member/Commissioner Matarrese inquired whether there is committee with Planning Board Members.

The Deputy City Manager – Development Services responded in the affirmative; stated the committee meets monthly; stated the Planning Services Manager represents the City and would raise the issue; the Chinatown Committee would receive the Notice of Preparation and be invited to attend the May 10<sup>th</sup> meeting.

In response to Mayor/Chair Johnson's inquiry regarding the agreement with Chinatown capping the number of housing units at 1,100 until a transportation solution is in place, the Planning Supervises Manager stated the agreement with Chinatown is designed to ensure coordination with Chinatown in the preparation of the EIR; the 1,100 figure is not a cap; the agreement states that the City would provide a specific amount for

transportation mitigation for each unit up to 1,000 units, which is described as the first phase of the project; in return, Chinatown agreed that they would not submit a lawsuits for the first phase.

Mayor/Chair Johnson inquired how the matter fits with current discussions, to which the Planning Services Manager responded the mitigation payment still applies; mitigation required for units beyond the first 1,000 is unresolved with Chinatown.

Mayor/Chair Johnson stated the Alameda Point Community Partners (APCP) plan was for 1,800 units; inquired how the proposal for more units fits into the agreement.

The Planning Services Manager responded the agreement requires that the City coordinate with Chinatown through the entire environmental process, allows for a pre-determined mitigation payment for the first 1,000 units, and does not limit what the City can do in terms of an ultimate development envelope for Alameda Point; the City understood that there would be more than 1,000 units; the key is to coordinate the EIR process with the Chinatown process.

Mayor/Chair Johnson inquired whether there have to be mitigation measures after first 1,000 units.

The Planning Services Manager responded in the affirmative; stated the Planning Board representative on the Chinatown committee does wants to start conversations now and does not want to wait until the EIR is published.

Mayor/Chair Johnson inquired what number is being used as the basis for discussions.

The Planning Services Manager responded Chinatown work with whatever number the City puts out; until recently, Chinatown was working with the Measure B number; Chinatown will be working with the new application number once the Notice of Preparation is released.

Speakers: Frank Faye, SunCal; and Rosemary McNally, Alameda.

Following Mr. Faye's comments, Vice Chair/Board Member/Commissioner deHaan inquired whether costs that SunCal wishes to recover could be broken down.

Mr. Faye responded in the affirmative; stated SunCal is not seeking to recover costs; the arrangement with the City is that monies are pulled out of a special escrow account set up with the City quite some time ago; the City has a record of each and every expenditure from the time that checks were issued and payments were made; that SunCal is happy to make anything available.

Vice Mayor/Board Member/Commissioner deHaan inquired whether there would be a

breakdown of the costs, to which Mr. Faye responded in the affirmative.

The Deputy City Manager – Development Services stated staff was informed that there are costs that were not included in the escrow account.

Mr. Faye stated that he does not have any problem providing any additional incurred costs that have not come from the escrow account.

Vice Mayor/Board Member/Commissioner deHaan provided a handout outlining the various plans submitted; stated the Measure B plan has 4,500 homes; the modified plan shows the same density of 4,500 homes; [Measure B has] 3.5 million square feet for commercial; the density bonus is up 4.3 million square feet; inquired why the City went through Measure B and now SunCal is submitting something that has more than Measure B.

Mr. Faye responded there are a couple of answers to the question assuming the numbers are correct; stated Measure B would never have been necessary had State law relative to promoting affordable housing with the corresponding density bonus been in place and had the City's Municipal Code been modified to address the promotion of affordable housing through density bonus; if State law and Alameda's changes arrived at a different time or if the ENA timeline were different, there never would have been an election; the density would have been at the discretion of the Council.

Vice Mayor/Board Member/Commissioner deHaan stated references were made to density bonus in the Measure B dialogue, which is contrary to what Mr. Faye is saying.

Mr. Faye stated the project proponent submitted signatures in September; State law changes went into affect shortly thereafter; the City implemented State law through changes to the Municipal Code in mid December.

Councilmember/Board Member/Commissioner Matarrese stated that he thought the density bonus State law was in place before.

The City Attorney/Legal Counsel stated the State density bonus law has been in place for a couple of decades; the City was a little late in adopting its own ordinance, which is completely consistent with State law.

Councilmember/Board Member/Commissioner Matarrese stated State law could have been invoked ten years ago; the City would need to comply because State law supersedes City law.

Mayor/Chair Johnson requested clarification.

The City Attorney/Legal Counsel stated the State density bonus law has been in place

for at least twenty years; the City's ordinance complies with the State and restates the law in a more user friendly way; anyone could have asked for a density bonus even if the ordinance was not in place.

Mayor/Chair Johnson inquired whether anybody could have requested a density bonus under State law before the City adopted its ordinance, to which the City Attorney/Legal Counsel responded in the affirmative; stated one prior application did seek a density bonus.

Mr. Faye stated specific changes were made to State law that allowed Charter cities to do things a little differently; particular changes to the Municipal Code would have rendered the Measure B election unnecessary; that he is not disputing the actual existence of a density bonus provision but the applicability to Charter cities and the way Charter cities can modify the Charter.

Mayor/Chair Johnson inquired whether Mr. Faye is stating that the City had not adopted a density bonus ordinance before because the City was exempt as a Charter city.

Mr. Faye responded in the negative; stated that he is not disputing that density bonus provisions were in place; the issue is what Charter cities can and cannot do under the modified State law relative to density bonuses; it goes to the Council's new ability to modify its Charter without an election of the people which was not the case in Alameda prior to the adoption of the Code in the middle of December of last year.

The City Attorney/Legal Counsel stated State density bonus ordinances have always pre-empted [City ordinances]; Charter cities are just as bound as General Law cities.

Mr. Faye stated it is the way in which the City adopted implementing State law to address the City's Charter that deals with attached housing.

Mayor/Chair Johnson inquired whether Mr. Faye agrees that the State density bonus law applied in Alameda even before December.

Mr. Faye responded the State density law applied; the State density law that allows Council to modify its Charter, as opposed to having an election of the people to modify the Charter, did not exist in the City until the middle of December.

Councilmember/Board Member/Commissioner Matarrese stated that he does not see any difference regarding density bonus between today and October or June; inquired whether the situation is the same; further inquired whether a density bonus application today is governed by the same rule of law as six months ago, to which the City Attorney/Legal Counsel responded in the affirmative.

Mayor/Chair Johnson stated Mr. Faye is saying that the City can amend its Charter

without a vote of the people under the new revision of the law; inquired whether Mr. Faye would dispute that the State density bonus law applied in Alameda.

Mr. Faye responded the issue is the implementation of the density bonus provisions; stated given the prohibitions on certain kinds of attached dwellings because of Measure A, Charter Article 26, the ability to modify the City Charter to implement the law was not enacted by the City until the middle of December; the election would have been moot had that been enacted sooner and had the State law provisions that caused the City to enact the modification to the Code in the middle of December.

Mayor/Chair Johnson stated that the City has a fundamental disagreement with Mr. Faye; the City has a different understanding of the applicability of the State's density bonus law; Mr. Faye believes that the State density bonus law did not apply in Alameda until December.

Mr. Faye stated that is not what he is saying; Measure A prevents certain kinds of attached dwelling units; in order to modify the City Charter, Council enacted an ordinance in the middle of December and implemented State law that permits the City Charter to be amended by Council, not requiring a vote of the people; the election would have been irrelevant had the particular provision of the Code been changed before the project proponents submitted signatures.

Mayor/Chair Johnson inquired whether there is any difference in how State law would have been applied before December; requested an explanation from the City Attorney/Legal Counsel; also requested an explanation of the application of the State density bonus law.

Councilmember/Board Member/Commissioner Tam stated when the Council discussed the density bonus in December, the City Attorney/Legal Counsel stated that State law nullified Measure A for the City and State law trumps the Charter.

The City Attorney/Legal Counsel stated that she said State law pre-empts the Charter; density bonus is a matter of Statewide concern; it does not mean that Measure A is set aside; in order to implement bonus market rate units, someone could need and request a waiver of the multi-family restriction; the same was true before December and has been true for twenty years.

Councilmember/Board Member/Commissioner Tam stated the ordinance was tailored to Alameda; discussions involved exempting the 15% requirement if there is inclusionary housing; inquired whether said issue was unique to Alameda.

The City Attorney/Legal Counsel responded in the negative.

Councilmember/Board Member/Commissioner Tam inquired whether said issue is in

State law; to which the City Attorney/Legal Counsel responded in the negative; stated the 15% versus 25% inclusionary housing issue is not in State law, is a separate issue and was a separate modification.

Councilmember/Board Member/Commissioner Matarrese stated that he understands Mr. Faye is saying SunCal would have acted differently and not put Measure B on the ballot had the City enacted the ordinance earlier; nothing is different; the same outcome is possible today as six months ago without the ordinance; that he has a hard with taking that as a real answer.

Mr. Faye stated that he tries to give real answers; the adoption by the City of the ability to modify the Charter through Council action versus an election of the people is very different than isolating and focusing on the density bonus provisions; it is very interesting for the City Attorney/Legal Counsel to point out that density bonus provisions have been in State law for a long time, which is correct; the ability to implement that was limited in Alameda by the City Charter; until the middle of December, the Municipal Code was not modified to comply with State law to allow for modifications to the City Charter to accomplish the density bonus provisions in State law relevant to Measure A.

Mayor/Chair Johnson stated that is where there is a fundamental disagreement on the interpretation and application of State law.

The City Attorney/Legal Counsel stated the City's density bonus did not modify Measure A; only a vote of the citizens can modify Measure A; Council does not have the authority to make an amendment or modification to Measure A; the density bonus ordinance simply implements existing State law and creates the opportunity for a developer entitled to a density bonus to place or site additional market rate units that comprise the bonus; Council has to grant a waiver if the developer shows that it is necessary to waive the multi-family restriction under Measure A in order to fit the development, including the new market rate units, on the site.

Mayor/Chair Johnson inquired whether that would have applied in June before the ordinance was passed in mid December.

The City Attorney/Legal Counsel responded in the affirmative; stated the ordinance just makes it easier, more reader friendly and makes the process consistent so that the community does not get a different answer from the Community Development Department.

Mayor/Chair Johnson stated the issue that needs to be really clear is that the Council action in December did not really change that; even June or two years before, the same thing could have been done by any developer under State law that was not tailored to Alameda laws.

The City Attorney/Legal Counsel stated the City had one application for density bonus under State law before the City had an ordinance on the books.

Councilmember/Board Member/Commissioner Gilmore stated that she does not think Council thought passing the density bonus ordinance changed Measure A.

Mr. Faye stated the ordinance in mid-December specifically allows a developer to submit an application that not only increases density with providing affordable housing but also grounds Council the ability to consider a waiver of Measure A, which was new.

Mayor/Chair Johnson stated the record needs to be very clear that the State density bonus law would have allowed the same thing; changing Measure A is not necessary; Council did not do anything in December that is different than State density bonus law; Council did not amend Measure A; amending Measure A is not necessary to use the density bonus ordinance; the State density bonus law has been in place for many years and could have been used by SunCal at any time with the same affect essentially as the City's density bonus ordinance passed in December which only reflected a few changes for Alameda.

Mr. Faye stated bringing back the ordinance at the next meeting might be appropriate; that he thinks there was material changes.

Mayor/Chair Johnson stated the question is whether SunCal had the ability to use the density bonus ordinance before December and the answer is yes.

Mr. Faye stated the answer to the question, as to whether SunCal was able to get a waiver to Measure A under the Code absent a vote of the people, changed in mid December.

Mayor/Chair Johnson stated the question is whether SunCal was able to get an effective change to Measure A under State density bonus law; the City Attorney/Legal Counsel would say yes; inquired whether said statement is correct.

The City Attorney/Legal Counsel responded in the affirmative; stated Council would have had the obligation under State density bonus law to consider a request for a waiver of the multi-family configuration restriction if necessary to site additional market rate units granted through the bonus, which is what the law says; Council would have been obligated to consider that even prior to the ordinance.

Mayor/Chair Johnson stated that she is getting the sense that Mr. Faye is saying that it is the City's fault that SunCal had to put Measure B on the ballot because the City did not do a density bonus ordinance until December, which is not the case.

Mr. Faye stated that he is not what he is saying; there is a difference between the

implementation of the density bonus provisions for affordable housing that have existed in State law and the ability to modify the City Charter absent a vote of the people; Council changed that in the middle of December; the dialogue that SunCal had was that the only way to implement a change to Measure A was to have a vote of the people; when the Code was modified, SunCal looked into whether the election could be pulled, but there is no ability to do so under the Elections Code.

Mayor/Chair Johnson stated SunCal's attorney and the City Attorney/Legal Counsel should both provide a brief on whether the City fundamentally changed SunCal's ability to request a density bonus under State law by anything the City did in December; SunCal did not need an amendment to Measure A to request a density bonus and to get what is entitled to under a density bonus ordinance.

Mr. Faye stated that is a good solution.

Vice Mayor/Board Member/Commissioner deHaan stated SunCal went to the ballot for Measure A, a specific plan, and a development agreement; SunCal was aware of density bonus before.

Mr. Faye stated most voters were in favor of the plan; however, most voters were opposed to the process; voters felt the effort was to usurp Council's ability to do its job; that he hopes the debate will be about the plan/plans and not about a discussion of process; now the process is normal.

Vice Mayor/Board Member/Commissioner deHaan stated SunCal went to the ballot for Measure A [amendment], a specific plan and a development agreement; Mr. Faye is saying none of that would have been done if the City had a density bonus ordinance; density bonus was discussed leading up to Measure B; SunCal was aware of density bonus.

Mr. Faye stated polls showed most voters were in favor of the plan, but opposed to the process; the debate now should be about the plan, not the process.

Vice Mayor/Board Member/Commission deHaan stated that his own polling indicated that the reasons the Measure was defeated were SunCal's financial inabilities, with 29 bankruptcies, transportation and traffic impacts, elimination of historical buildings, Measure A, density, environmental remediation, ballot box initiative deal, specific plan and environmental impact study; the back page of his handout has the Exclusive Negotiating Agreement (ENA) proposal the SunCal agreed to, which spells out the requirements and what the City was looking for: 1,735 new homes and 3.4 million square feet office space; said criteria was set; SunCal came back continually saying that it does not pencil out.

Mr. Faye stated SunCal came back in response to new information.

Vice Mayor/Councilmember/Commissioner deHaan inquired whether Mr. Faye is referring to the flood plane, which was identified in the Preliminary Development Concept.

Mr. Faye stated there were a number of physical changes to the real property and there continue to be a number of changes to the condition of the real property; new information continues to come forward which affects costs; cost affects the need for revenue; costs and revenue are what derive project profit and internal rate of return.

Vice Mayor/Board Member/Commissioner deHaan inquired whether SunCal would release information regarding infrastructure, public amenities and the cap, which SunCal documents ran up to \$700 million.

Mr. Faye responded all information would be released; stated the cost cap was removed two months before the election.

Councilmember/Board Member/Commissioner Matarrese noted even though SunCal lifted the cap two months before, the cap was in the initiative; if it had passed, the initiative would have been the law of the land.

#### (10-182 CC/ARRA/10-22 CIC) Election Costs and Request for Reimbursement

The Interim City Manager/Executive Director gave a brief presentation.

Councilmember/Board Member/Commissioner Matarrese inquired whether half of the Interim City Manager/Executive Director's salary has been paid by SunCal, to which the Interim City Manager/Executive Director responded that she does not charge anything to SunCal.

Councilmember/Board Member/Commissioner Matarrese requested future clarification of the matter; stated the matter should be sorted out and posted.

Councilmember/Board Member/Commissioner Tam stated the actual draws need to be posted.

Mayor/Chair Johnson stated SunCal needs to understand what they are paying for.

The Interim City Manager/Executive Director stated that she is willing to disclose everything but the City cannot go as fast as SunCal; continued the presentation.

Mr. Faye stated that he is not disputing the budget; the Deputy City Manager – Development Services indicated that the City Attorney/Legal Counsel is not billing time, which is correct according to timecards; SunCal was advised that the Interim City

Manager/Executive Director's time is being billed; timecards show otherwise; SunCal requested clarification.

Mayor/Chair Johnson stated responses should be received before addressing issues in public in order to avoid confusion.

Vice Mayor/Board Member/Commissioner deHaan stated hopefully, there has been no misappropriation of funds; inquired how the Interim City Manager/Executive Director's charges are spread out to accounts.

The Interim City Manager/Executive Director responded staff is fully funded wherever allocated; that her salary is split: a little bit in redevelopment and a little bit in the General Fund; stated staff time is budgeted to programs; staff's hours are charged to the SunCal account; that her salary and the City Attorney/Legal Counsel's salary are not spread to individual projects.

(10-183 CC/ARRA/10-23 CIC) City Web Page - SunCal Updates and Repository

The Deputy City Manager – Development Services gave a brief presentation.

(10-184 CC/ARRA/10-24 CIC) City Response to SunCal's Modified Optional Entitlement Application

The Interim City Manager/Executive Director gave a brief presentation; stated a letter requesting further qualification and clarification of the application will go out tomorrow; the City Attorney/Legal Council will send out a letter with respect to reservation of rights tomorrow.

Speakers: Nancy Gordon, Alameda; and Gretchen Lipow, Alameda.

## AGENDA ITEMS

None

## ADJOURNMENT

There being no further business, Mayor/Chair Johnson adjourned the meeting at 11:48 p.m.

Respectfully submitted,

Lara Weisiger  
City Clerk  
Secretary, CIC

The agenda for this meeting was posted in accordance with the Brown Act.